

THE UNFINISHED PILLAR: NEGOTIATING THE EU–INDIA INVESTMENT PROTECTION AGREEMENT BETWEEN THE INVESTMENT COURT SYSTEM AND STATE-TO-STATE ARBITRATION

by

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ABSTRACT

The conclusion of the India–European Union Free Trade Agreement on 27 January 2026 left its investment pillar unbuilt. Investment protection was assigned to a separate Investment Protection Agreement (IPA), negotiated in parallel since June 2022 and still unconcluded. Meanwhile, European investments made in India after the 2017 termination of India’s bilateral investment treaties with twenty-two EU member states enjoy no treaty protection at all. This article examines the institutional question at the centre of the negotiation: whether disputes under a future IPA should be resolved by the European Union’s two-tier Investment Court System (ICS) or by the state-to-state mechanisms that now characterise India’s trade agreements. It traces the arbitral experience behind India’s 2016 Model Bilateral Investment Treaty, the constraints that EU constitutional law places on any dispute settlement design after Opinion 2/15, Achmea and Opinion 1/17, and India’s treaty practice through 2026, including the pending revision of its Model BIT. Drawing on the literature on institutional choice in investment law, it argues that the two positions are less opposed than the binary suggests. Both reject ad hoc, party-appointed arbitration, and both seek interpretive control by the treaty parties. The real obstacles lie in four narrower issues: exhaustion of local remedies, the taxation carve-out, most-favoured-nation treatment and the enforceability of awards in India. The article proposes a model of “sequenced standing adjudication” that combines dispute prevention, a time-limited domestic remedies phase and state-to-state filters with a bilateral standing court docked to multilateral reform.

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Keywords: Investment Court System; State-to-State Arbitration; EU–India Investment Protection Agreement; Investor–State Dispute Settlement; Indian Model BIT; Exhaustion of Local Remedies

I. INTRODUCTION:

On 27 January 2026, after almost two decades of intermittent negotiation, the European Union and India concluded a free trade agreement.² What they did not conclude was an agreement protecting investment. When talks were re-launched on 17 June 2022, the parties divided the project into three tracks: a trade agreement, an agreement on geographical indications, and a separate Investment Protection Agreement (IPA).³ The first track has reached its destination. The third remains, as one practitioner commentary puts it, the unfinished part of an otherwise historic treaty.⁴

The gap is not academic. In 2016 and 2017 India served termination notices on fifty-eight bilateral investment treaties (BITs), including its treaties with twenty-two EU member states.⁵ Investments made before termination retain protection for the life of the treaties' sunset clauses, typically ten to fifteen years;⁶ investments made afterwards have none. European capital entering India since 2017 has therefore done so without any treaty guarantee, relying instead on contract, domestic law and the customary minimum standard. The European Commission's stated aim in the IPA talks is to give investors on both sides a predictable and secure investment environment, enforced through what it calls an effective and state-of-the-art dispute settlement mechanism.⁷

"State-of-the-art" is a term of art in Brussels. Since 2015 the EU has insisted that its investment agreements replace ad hoc investor–state arbitration with a permanent, two-tier Investment Court System (ICS), conceived as a stepping stone to a Multilateral Investment Court.⁸ India, by contrast, has spent a decade narrowing its exposure to investor claims. Its

² Directorate-General for Trade, Eur. Comm'n, EU–India Agreements, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india/eu-india-agreements_en (last visited Oct. 24, 2026).

³ *Id.*

⁴ Clyde & Co, *India–EU Free Trade Agreement: An Unfinished Treaty* (Feb. 2026), <https://www.clydeco.com/en/insights/2026/02/india-eu-free-trade-agreement-an-unfinished-treaty>.

⁵ Herbert Smith Freehills, *Mixed Messages to Investors as India Quietly Terminates Bilateral Investment Treaties with 58 Countries* (Mar. 16, 2017), <https://www.hsfkramer.com/notes/publicinternationallaw/2017-03/mixed-messages-to-investors-as-india-quietly-terminates-bilateral-investment-treaties-with-58-countries>.

⁶ *Id.*; Douglas Busvine, *EU Warns on Lapse of Investment Protection Deals with India*, Reuters (Nov. 11, 2016), reproduced at <https://bilaterals.org/eu-warns-on-lapse-of-investment>

⁷ EU–India Agreements, *supra* note 1.

⁸ Eur. Comm'n, Concept Paper, *Investment in TTIP and Beyond – the Path for Reform: Enhancing the Right to Regulate and Moving from Current Ad Hoc Arbitration Towards an Investment Court* (May 5, 2015); Council of the Eur. Union, Negotiating Directives for a Convention Establishing a Multilateral Court for the Settlement of

2016 Model BIT requires investors to litigate in Indian courts for five years before arbitrating,⁹ and its newer trade agreements with the European Free Trade Association (EFTA) and the United Kingdom contain no investor–state mechanism at all.¹⁰

This article asks whether these two architectures can be reconciled, and how. It makes three claims. First, the opposition between the ICS and state-to-state arbitration overstates the distance between the parties: both reject the party-appointed, case-by-case tribunal that produced the awards India most resents, and both seek to restore the treaty parties' control over interpretation. Second, the genuine points of friction are narrower and more technical than the institutional binary suggests: exhaustion of local remedies, the exclusion of taxation, most-favoured-nation (MFN) treatment and the enforceability of awards in India. Third, a hybrid design, here called sequenced standing adjudication, can accommodate both sides' core commitments within the limits that EU constitutional law imposes.

The argument proceeds as follows. Part II reconstructs the origins of the treaty vacuum. Part III examines the ICS and the EU constitutional law that shapes it. Part IV analyses India's treaty model and its practice through 2026. Part V assesses state-to-state arbitration as a doctrinal alternative. Part VI maps the negotiating space, and Part VII sets out the proposed design. Part VIII concludes.

II. THE ORIGINS OF THE TREATY VACUUM:

A. From a Network of Treaties to Termination:

India's first generation of BITs, based on its 1993 model text, offered foreign investors the familiar package of fair and equitable treatment (FET), full protection and security, MFN treatment, protection against uncompensated expropriation and direct access to international arbitration.¹¹ India signed more than eighty such treaties, with counterparties including the United Kingdom, France and Germany.¹² As Ranjan's study of India's treaty programme shows, these treaties were concluded in the years of economic liberalisation, when signing them served as a signal of openness rather than the product of a careful assessment of legal

Investment Disputes, Doc. 12981/17 ADD 1 DCL 1 (Mar. 20, 2018) [hereinafter MIC Negotiating Directives].

⁹ Gov't of India, Model Text for the Indian Bilateral Investment Treaty art. 15.1 (2015) [hereinafter Indian Model BIT].

¹⁰ Fresh fields, *India's Investment Treaty Landscape in 2026*, Risk & Compliance Blog (Mar. 16, 2026), <https://www.freshfields.com/en/our-thinking/blogs/risk-and-compliance/indias-investment-treaty-landscape-in-2026-102mmwp>; Lalive, *The UK–India Free Trade Agreement: What Does It Mean for British Businesses and Investors?* (July 15, 2026), <https://www.lalive.law/the-uk-india-free-trade-agreement-what-does-it-mean-for-british-businesses-and-investors/>.

¹¹ Prabhash Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* (2019).

¹² Herbert Smith Freehills, *Mixed Messages*, *supra* note 4.

risk.¹³ Poulsen's wider study of developing-country treaty-making reaches a similar conclusion: governments frequently signed BITs with only limited appreciation of the liabilities they were accepting.¹⁴

That appreciation arrived later. In December 2015 the Union Cabinet approved a new Model BIT, and India then began terminating treaties whose initial terms had expired.¹⁵ The India–Netherlands BIT, a common route for investment into India, was terminated with effect from December 2016.¹⁶ The EU asked India to extend the member state treaties pending a single EU-level agreement; India declined and insisted that any new treaty follow its new model.¹⁷ The India–Netherlands BIT preserves its substantive protections for fifteen years after termination for investments made before that date, and India's treaties with the United Kingdom and Germany contain similar sunset clauses.¹⁸ The result is a two-tier landscape for European capital: legacy investments protected into the early 2030s, and new investments protected by no treaty at all.

B. the Arbitral Experience behind India's Retreat:

India's retreat responded to a series of claims. The first adverse award, *White Industries Australia Ltd. v. Republic of India*, held India liable for the delay of its courts in enforcing a commercial arbitral award. The tribunal reached that result by importing, through the MFN clause of the India–Australia BIT, an obligation to provide “effective means” of asserting claims that appeared in the India–Kuwait BIT.¹⁹ The award touched two nerves at once. It treated judicial delay, a chronic feature of Indian litigation, as an international wrong, and it showed how an MFN clause could import a standard that India had never offered the claimant's home state.²⁰

Later disputes raised the stakes. In the *Antrix–Devas* affair, tribunals constituted under the India–Mauritius and India–Germany BITs found that India's annulment of a satellite spectrum

¹³ Ranjan, *supra* note 10.

¹⁴ Lauge N. Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (2015).

¹⁵ Indian Model BIT; Herbert Smith Freehills, *Mixed Messages*, *supra* note 4

¹⁶ Herbert Smith Freehills, *Mixed Messages*, *supra* note 4.

¹⁷ *India Refuses to Accede to European Union Requests; Post-March, Investors to Have No Legal Cover*, Fin. Express (Mar. 2, 2017), reproduced at <https://isds.bilaterals.org/india-refuses-to-accede-to>; Busvine, *supra* note 5.

¹⁸ Herbert Smith Freehills, *Mixed Messages*, *supra* note 4.

¹⁹ *White Indus. Austl. Ltd. v. Republic of India*, UNCITRAL, Final Award (Nov. 30, 2011).

²⁰ Ranjan, *supra* note 10; Clifford Chance, *India's Foreign Investment Strategy: Latest Developments* (July 2025), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2025/07/latest-developments-in-india-bit.pdf>.

contract breached its treaty obligations.²¹ The *Deutsche Telekom* award, obtained by an EU investor under an EU member state's treaty, has since been pursued in enforcement proceedings in several jurisdictions, including Germany.²² Two further claims arose from India's retrospective taxation of indirect transfers of shares in Indian companies, and in both the tribunals ruled against India in 2020.²³ Parliament subsequently withdrew the retrospective tax demands through the Taxation Laws (Amendment) Act, 2021.²⁴ The *Vodafone* claim was brought under the India–Netherlands BIT, the *Deutsche Telekom* claim under the India–Germany BIT and the Cairn claim under the India–United Kingdom BIT. A significant part of India's adverse experience, in other words, arose under treaties with EU member states, whose investors a future IPA would cover.

Two lessons shaped India's response, and both bear directly on the IPA. The first concerns the adjudicator. Indian commentary criticised tribunals for expansive readings of open-textured standards and for second-guessing sovereign regulatory and fiscal choices.²⁵ The second concerns subject matter: taxation came to be regarded in New Delhi as categorically unsuitable for international adjudication. The 2016 Model BIT answered both lessons, by narrowing substantive standards and by placing taxation outside the treaty altogether.²⁶ Whatever form the IPA's dispute mechanism takes, it must respond to these lessons, and not merely to the question of who sits on the bench.

C. The EU's Competence and the Separate-Agreement Architecture:

The European side of the vacuum has its own legal history. The Treaty of Lisbon brought foreign direct investment within the Union's exclusive competence over the common commercial policy.²⁷ Regulation No. 1219/2012 then allowed existing member state BITs

²¹ *CC/Devas (Mauritius) Ltd. v. Republic of India*, PCA Case No. 2013-09, Award on Jurisdiction and Merits (July 25, 2016); *Deutsche Telekom AG v. Republic of India*, PCA Case No. 2014-10, Interim Award (Dec. 13, 2017); *id.*, Final Award (May 27, 2020).

²² Kammergericht [KG] [Higher Regional Court of Berlin] Jan. 26, 2023, 12 Sch 7/21 (Ger.) (partial enforcement of the *Deutsche Telekom* award), https://www.italaw.com/sites/default/files/case-html-files/italaw171094_Judgment-from-the-Higher-Regional-Court-of-Berlin_2023-01-26.html; Sovereign Immunity and the Enforcement of Investor-State Arbitration Awards: *Lessons from Devas v India in Australia, the United Kingdom and India*, Conflict of Laws (2025), <https://conflictoflaws.net/2025/sovereign-immunity-and-the-enforcement-of-investor-state-arbitration-awards-lessons-from-devas-v-india-in-australia-the-united-kingdom-and-india/>.

²³ *Vodafone Int'l Holdings BV v. Republic of India*, PCA Case No. 2016-35, Award (Sept. 25, 2020); *Cairn Energy PLC v. Republic of India*, PCA Case No. 2016-07, Final Award (Dec. 21, 2020).

²⁴ The Taxation Laws (Amendment) Act, 2021, No. 31, Acts of Parliament, 2021 (India).

²⁵ Prabhaskar Ranjan & Pushkar Anand, *The 2016 Model Indian Bilateral Investment Treaty: A Critical Deconstruction*, 38 Nw. J. Int'l L. & Bus. 1 (2017); Grant Hanessian & Kabir Duggal, *The 2015 Indian Model BIT: Is This Change the World Wishes to See?*, 30 ICSID Rev. 729 (2015).

²⁶ Indian Model BIT art. 2.4(ii).

²⁷ Consolidated Version of the Treaty on the Functioning of the European Union, arts. 3(1)(e), 207(1), 2016 O.J. (C 202) 47 [hereinafter TFEU].

with third countries to remain in force until replaced by EU agreements.²⁸ By the time the EU sought a single treaty with India, however, India had already terminated most of those bilateral instruments, so the transitional regime had little left to preserve.

The Court of Justice of the European Union (CJEU) defined the limits of EU competence in Opinion 2/15 on the EU–Singapore agreement. It held that the Union’s exclusive competence did not extend to non-direct (portfolio) investment or to the regime for investor–state dispute settlement, which removes disputes from the jurisdiction of member state courts; those matters are shared with the member states.²⁹ The practical consequence was structural. To spare its trade agreements the need for ratification by every national parliament, the EU began negotiating investment protection in separate agreements requiring mixed ratification.³⁰ The India negotiation mirrors this split. It also explains why an IPA, once concluded, will take far longer than the trade agreement to enter into force: each member state must ratify it.

III. THE EUROPEAN MODEL: THE INVESTMENT COURT SYSTEM:

A. Design Features:

The ICS emerged from the political crisis over investor–state arbitration that accompanied the Transatlantic Trade and Investment Partnership negotiations. In a 2015 concept paper the Commission proposed to replace party-appointed arbitrators with a standing body of adjudicators, to add an appellate tier, and to tighten rules on ethics and transparency.³¹ The design entered positive law in the Comprehensive Economic and Trade Agreement (CETA) with Canada.

Under CETA, claims are heard by a Tribunal of fifteen members appointed by the treaty parties’ Joint Committee: five nationals of EU member states, five nationals of Canada and five nationals of third countries, who sit in divisions of three assigned on a rotating basis.³² An Appellate Tribunal may review awards for errors in the application or interpretation of the applicable law, for manifest errors in the appreciation of facts, and on the grounds for

²⁸ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 Establishing Transitional Arrangements for Bilateral Investment Agreements Between Member States and Third Countries, 2012 O.J. (L 351) 40.

²⁹ Opinion 2/15, Free Trade Agreement between the European Union and the Republic of Singapore, ECLI: EU: C: 2017:376 (May 16, 2017).

³⁰ *EU Parliamentarians Endorse Vietnam Trade, Investment Deals*, Inv. Treaty News (Int’l Inst. for Sustainable Dev.), <https://www.iisd.org/itn/?p=7772> (last visited Oct. 24, 2026).

³¹ Concept Paper, *supra* note 7.

³² Comprehensive Economic and Trade Agreement, Can.–EU, art. 8.27, Oct. 30, 2016, 2017 O.J. (L 11) 23 [hereinafter CETA].

annulment set out in the ICSID Convention.³³ Members are subject to ethics requirements, including a prohibition on acting as counsel or party-appointed expert or witness in other investment disputes.³⁴ Interpretations adopted by the Joint Committee bind the Tribunal.³⁵ Substantively, CETA replaces the open FET standard with a closed list of breaches and affirms the parties' right to regulate.³⁶ An investor must withdraw or discontinue parallel domestic proceedings concerning the same measure before its claim may proceed.³⁷ Finally, the parties undertake to pursue a multilateral investment tribunal and appellate mechanism that would replace the bilateral system.³⁸

The same architecture, with variations, appears in the EU's stand-alone investment protection agreements with Singapore and Vietnam,³⁹ and in the Advanced Framework Agreement with Chile, whose first-instance tribunal has nine members.⁴⁰ Most recently, the modernised EU–Mexico Global Agreement, signed on 22 May 2026, replaces some fourteen member state BITs with an ICS of nine judges appointed in equal thirds from the EU, Mexico and third countries.⁴¹ The negotiating directives for a Multilateral Investment Court, adopted by the Council in 2018, frame each bilateral court as a transitional step towards a single multilateral body.⁴²

The EU has published a text proposal for the India negotiation; India has not disclosed a counter-text.⁴³ Commentators identify the points of contention as the justiciability of taxation measures, the EU's push for a two-tier court, and the scope of the MFN and FET provisions.⁴⁴ The Commission's report on the fourth negotiating round, held in Brussels in March 2023,

³³ *Id.* art. 8.28; Convention on the Settlement of Investment Disputes between States and Nationals of Other States, art. 52(1), Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 [hereinafter ICSID Convention].

³⁴ CETA art. 8.30.

³⁵ *Id.* art. 8.31.3.

³⁶ *Id.* arts. 8.9, 8.10.

³⁷ *Id.* art. 8.22.

³⁸ *Id.* art. 8.29.

³⁹ Investment Protection Agreement Between the European Union and Its Member States, of the One Part, and the Republic of Singapore, of the Other Part, Oct. 19, 2018 [hereinafter EU–Singapore IPA]; Investment Protection Agreement Between the European Union and Its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part, June 30, 2019 [hereinafter EU–Vietnam IPA].

⁴⁰ *Van Bael & Bellis*, The EU–Chile Advanced Framework Agreement: A Brief Analysis of the Investment Protection Provisions (Mar. 2, 2023), https://www.vbb.com/media/Insights_Articles/2-3-2023-EU_Chile_Investment_chapter.pdf.

⁴¹ Mayer Brown, The EU–Mexico Global Agreement (May 2026), <https://www.mayerbrown.com/en/insights/publications/2026/05/the-eu-mexico-global-agreement>; Basham, Ringe y Correa, Mexico and the European Union Sign the Modernised Global Agreement and the Interim Trade Agreement (May 25, 2026), <https://basham.com.mx/en/mexico-and-the-european-union-sign-the-modernised-global-agreement-and-the-interim-trade-agreement/>.

⁴² MIC Negotiating Directives, *supra* note 7.

⁴³ CELIS Inst., *Trade and Investment between the EU and India: A Promising Horizon with a Closer Look at Negotiation Roadblocks* (2023), <https://www.celis.institute/celis-blog/trade-and-investment-between-the-eu-and-india-a-promising-horizon-with-a-closer-look-at-negotiation-roadblocks/>.

⁴⁴ *Id.*

records discussion of each side's proposals on definitions and exceptions and the identification of areas of convergence and divergence.⁴⁵ The public record is otherwise thin, and the analysis that follows proceeds from the parties' published models and treaty practice.

B. Constitutional Foundations in EU Law:

For the EU, the ICS is not merely a policy preference. It is also the design most likely to withstand review under EU constitutional law, whose limits are drawn by three judgments of the CJEU.

1. *Achmea and the Autonomy of EU Law:*

In *Achmea* the Court held that the arbitration clause of an intra-EU BIT was incompatible with EU law, because a tribunal outside the EU judicial system could be called on to interpret or apply EU law without any possibility of a preliminary reference to the Court.⁴⁶ *Komstroy* extended that reasoning to intra-EU proceedings under the Energy Charter Treaty.⁴⁷ The member states then terminated their intra-EU BITs by a plurilateral agreement signed in 2020.⁴⁸ These decisions concerned disputes within the Union, but they rest on a principle, the autonomy of the EU legal order, that conditions any external dispute settlement design as well.

2. *Opinion 1/17 and the Conditions for an External Court:*

In Opinion 1/17 the Court held that CETA's ICS was compatible with EU law.⁴⁹ Its reasoning sets the conditions that any EU–India mechanism must satisfy. The ICS was acceptable because its tribunals have no jurisdiction to interpret EU law other than by considering it as a matter of fact; because their awards cannot call into question the level of protection of public interests chosen by the EU institutions; because the agreement, with the accompanying commitments on access, was compatible with the right of access to an independent tribunal; and because its provisions on appointment, remuneration and ethics secured the tribunals' independence.⁵⁰ The Opinion placed weight throughout on the agreement's preservation of the

⁴⁵ Eur. Comm'n, Report of the Fourth Round of Negotiations on an Investment Protection Agreement between the European Union and India (Mar. 20–24, 2023), <https://circabc.europa.eu/rest/download/1e46e8c7-026d-4156-8263-77e3070b0e45> [hereinafter Fourth Round Report].

⁴⁶ Case C-284/16, *Slowakische Republik v. Achmea BV*, ECLI: EU: C: 2018:158 (Mar. 6, 2018).

⁴⁷ Case C-741/19, *Republic of Moldova v. Komstroy LLC*, ECLI: EU: C: 2021:655 (Sept. 2, 2021).

⁴⁸ Agreement for the Termination of Bilateral Investment Treaties Between the Member States of the European Union, May 5, 2020, 2020 O.J. (L 169) 1.

⁴⁹ Opinion 1/17, *Comprehensive Economic and Trade Agreement Between Canada and the European Union*, ECLI:EU:C:2019:341 (Apr. 30, 2019).

⁵⁰ *Id.*

parties' right to regulate, a concept that Titi's work shows to be central to the newer generation of investment treaties.⁵¹

Opinion 1/17 has two implications for India. First, although the Opinion addressed only the ICS, the Commission has built its entire post-2015 practice on that model, and Opinion 1/17 is the only judicial confirmation that a mechanism of this kind is compatible with EU law. A return to ad hoc arbitration with a third state would carry constitutional risk that the EU is unlikely to accept. Second, and less often noticed, nothing in the Opinion turns on whether disputes begin in domestic courts. A requirement that investors first pursue remedies in the host state for a defined period is not inconsistent with the conditions the Court set. That point matters for the hybrid proposed below.

C. A Court without Cases:

The ICS has a distinctive empirical profile: no tribunal established under an EU investment agreement has yet heard a case. CETA's investment protection provisions were excluded from provisional application and await ratification by all member states.⁵² The Singapore and Vietnam IPAs, signed in 2018 and 2019, likewise remain out of force, with national ratification bills still being tabled in 2026.⁵³ Critics may treat this as evidence that the ICS is unworkable; a fairer reading is that the EU has accepted long delays in order to entrench a single model. Either way, India would be negotiating over an institution with a strong design pedigree but no operational record, a consideration that cuts in both directions.

IV. THE INDIAN MODEL: EXHAUSTION, EXCLUSION AND THE STATE-TO-STATE TURN

A. The 2016 Model BIT:

The 2016 Model BIT is among the most restrictive model texts adopted by a major capital-importing state. It defines investment by reference to an enterprise operating in the host state; it omits MFN treatment; and in place of FET it prohibits specific conduct, namely denial of

⁵¹ *Id.*; Catharine Titi, *The Right to Regulate in International Investment Law* (2014).

⁵² Council Decision (EU) 2017/38 of 28 October 2016 on the Provisional Application of the Comprehensive Economic and Trade Agreement (CETA) Between Canada, of the One Part, and the European Union and Its Member States, of the Other Part, 2017 O.J. (L 11) 1080.

⁵³ Projet de loi autorisant la ratification de l'accord de protection des investissements entre l'Union européenne et ses États membres, d'une part, et la République socialiste du Viet Nam, d'autre part, Sénat n° 920 (2025–2026) (Fr.), <https://www.senat.fr/leg/pjl25-920.html>; *EU Investment Protection Agreements with Singapore and Vietnam Proposed for Ratification in Bulgaria*, Bulg. News Agency, <https://bta.bg/en/news/500574-eu-investment-protection-agreements-with-singapore-and-vietnam-proposed-for-rati> (last visited Oct. 24, 2026).

justice, fundamental breaches of due process, targeted discrimination on manifestly unjustified grounds and manifestly abusive treatment.⁵⁴ It excludes taxation measures and treats the host state's own determination that a measure concerns taxation as non-justiciable.⁵⁵ Above all, it requires an investor to pursue domestic remedies for at least five years before bringing an international claim.⁵⁶

The literature divided sharply. Hanessian and Duggal questioned whether the text offered investors enough to make a treaty worth signing.⁵⁷ Ranjan and Anand welcomed its reassertion of regulatory space but identified ambiguities and imbalances that could undermine it.⁵⁸ More broadly, the model exemplifies the reassertion of state control documented in the literature on the backlash against investment arbitration and on the political economy of the treaty regime.⁵⁹ Roberts places such texts on a spectrum of reform, from incremental adjustments to paradigmatic shifts; India's 2016 model sits towards the systemic end, retaining arbitration but hedging it with preconditions.⁶⁰

B. Treaty Practice, 2020–2026:

India's practice since 2020 shows both firmness and flexibility. Its BITs with Kyrgyzstan and Uzbekistan retain the restrictive architecture while adding longer limitation periods, a full protection and security obligation and language easing enforcement under the New York Convention.⁶¹ The 2024 India–UAE BIT is the clearest departure. It covers portfolio investment and reduces the local remedies period to three years, while retaining the taxation carve-out, omitting MFN treatment and prohibiting third-party funding.⁶² Its gains for investors were real but bounded, and some Indian commentators argued that even the shorter period weakened India's ability to resolve disputes at home.⁶³

⁵⁴ Indian Model BIT art. 3.1; Ranjan & Anand, *supra* note 24.

⁵⁵ Indian Model BIT art. 2.4(ii); Herbert Smith Free hills, *India–UAE BIT 2024: A Measured Approach* (2024), <https://www.hsfkramer.com/notes/arbitration/2024-posts/India-UAE-BIT-2024-A-Measured-Approach>.

⁵⁶ Indian Model BIT art. 15.1

⁵⁷ Hanessian & Duggal, *supra* note 24

⁵⁸ Ranjan & Anand, *supra* note 24

⁵⁹ *The Backlash Against Investment Arbitration: Perceptions and Reality* (Michael Waibel et al. eds., 2010); Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen & Michael Waibel, *The Political Economy of the Investment Treaty Regime* (2017).

⁶⁰ Anthea Roberts, *Incremental, Systemic, and Paradigmatic Reform of Investor-State Arbitration*, 112 Am. J. Int'l L. 410 (2018).

⁶¹ Fresh fields, *supra* note 9.

⁶² Bilateral Investment Treaty Between the Republic of India and the United Arab Emirates, India–U.A.E., Feb. 13, 2024 [hereinafter India–UAE BIT]; Herbert Smith Free hills, *India–UAE BIT*, *supra* note 54; Clifford Chance, *supra* note 19.

⁶³ *India Eases Certain Conditions for UAE in Bilateral Investment Treaty: GTRI, Outlook Bus.*, <https://www.outlookbusiness.com/news/india-eases-certain-conditions-for-uae-in-bilateral-investment-treaty-gtri> (last visited Oct. 24, 2026).

In its trade agreements India has gone further. The India–EFTA Trade and Economic Partnership Agreement, in force since 1 October 2025, contains no investor–state mechanism.⁶⁴ The India–United Kingdom agreement likewise lacks a comprehensive investment protection chapter, and negotiations on a separate BIT reportedly stalled over taxation.⁶⁵ India has also concluded an Investment Cooperation and Facilitation Treaty with Brazil, which follows the Brazilian model of dispute prevention through national focal points and a joint committee, backed by state-to-state arbitration rather than investor claims.⁶⁶ Surveying this practice, one practitioner analysis describes India as offering investors incrementally more while preserving its insistence on regulatory sovereignty, mandatory local remedies and state-to-state dispute resolution in its trade agreements.⁶⁷

C. The Revised Model BIT of 2026:

India is now revising its model. In February 2026 the Ministry of Finance confirmed that a new text was being prepared to reflect the balance reached in recent negotiations;⁶⁸ by August 2026 the overhaul was reported to be in its final stages before submission to the Union Cabinet.⁶⁹ Press reports describe a two-year local remedies window, the continued exclusion of MFN, and flexibility to tailor treaties to the strategic weight of each partner.⁷⁰ No text had been published at the time of writing, so any analysis must be provisional. The direction of travel is nonetheless plain. India is moving towards investors along the axis of time (how long an investor must wait) rather than the axis of forum. On present reports, the new model still assumes that investor claims will eventually reach an international body. That assumption is the opening for the IPA.

V. STATE-TO-STATE ARBITRATION AS AN ALTERNATIVE:

⁶⁴ Fresh fields, *supra* note 9.

⁶⁵ Lalive, *supra* note 9.

⁶⁶ Investment Cooperation and Facilitation Treaty Between the Federative Republic of Brazil and the Republic of India, Braz.–India, Jan. 25, 2020 [hereinafter Brazil–India ICFT]; Nitish Monebhurrn, *Novelty in International Investment Law: The Brazilian Agreement on Cooperation and Facilitation of Investments as a Different International Investment Agreement Model*, 8 J. Int'l Disp. Settlement 79 (2017).

⁶⁷ Fresh fields, *supra* note 9.

⁶⁸ *Id.*

⁶⁹ *India's Revised Model BIT Reaches Final Stages Ahead of Cabinet Approval*, Inv. Treaty News (Int'l Inst. for Sustainable Dev.) (Sept. 9, 2026), <https://www.iisd.org/itn/2026/09/09/indias-revised-model-bit-reaches-final-stages-ahead-of-cabinet-approval/>.

⁷⁰ *New Bilateral Investment Model: 2-Year Local Remedy Window, No Most Favoured Nation Clause*, Indian Express (June 2026), <https://indianexpress.com/article/business/new-bilateral-investment-model-2-year-local-remedy-window-no-most-favoured-nation-clause-10730442/>.

A. Forms of Inter-State Investment Adjudication:

“State-to-state arbitration” covers several distinct mechanisms, and the IPA debate often blurs them. The oldest is diplomatic protection: a home state espouses its national’s claim, subject to the requirement that the national first exhaust local remedies.⁷¹ The International Court of Justice held in *ELSI* that the requirement is met where the substance of the claim has been brought before the competent local courts and pursued as far as local law permits.⁷² Diplomatic protection was the default mode for investment disputes before the rise of investor–state arbitration, and its discretionary, politicised character was a principal reason for that rise.⁷³

The second form is the inter-state arbitration clause found in nearly every BIT, which allows the treaty parties to litigate the treaty’s interpretation or application directly. It has rarely been invoked. In *Italy v. Cuba* a tribunal heard claims brought by Italy partly in the exercise of diplomatic protection on behalf of Italian investors.⁷⁴ In *Ecuador v. United States* Ecuador sought an authoritative interpretation of a BIT provision after an investor–state award it disliked, and the tribunal declined jurisdiction for want of a concrete dispute between the states.⁷⁵ The third form, newest and most relevant to India, is the cooperative model of the Brazilian agreements, in which adjudication between states is a last resort behind institutional dispute prevention.⁷⁶

Roberts offers the most influential theoretical account. She characterises investment treaty rights as hybrid, belonging partly to investors and partly to their home states, with the treaty parties retaining shared interpretive authority.⁷⁷ On this view, state-to-state procedures are not a regression to diplomatic protection but a means by which treaty parties can reclaim interpretive authority that investor–state tribunals had absorbed. Her earlier work frames the competing understandings of the regime as a clash between public and private law paradigms, a framing that maps closely onto the EU–India divide.⁷⁸

⁷¹ Int’l Law Comm’n, Draft Articles on Diplomatic Protection, with Commentaries, art. 14, U.N. Doc. A/61/10 (2006); *Interhandel* (Switz. v. U.S.), Preliminary Objections, Judgment, 1959 I.C.J. 6 (Mar. 21).

⁷² *Elettronica Sicula S.p.A. (ELSI)* (U.S. v. It.), Judgment, 1989 I.C.J. 15 (July 20).

⁷³ M. Sornarajah, *The International Law on Foreign Investment* (5th ed. 2021).

⁷⁴ *Italian Republic v. Republic of Cuba*, Ad Hoc State-State Arbitration, Final Award (Jan. 15, 2008).

⁷⁵ *Republic of Ecuador v. United States*, PCA Case No. 2012-5, Award (Sept. 29, 2012).

⁷⁶ Monebhurrin, *supra* note 65.

⁷⁷ Anthea Roberts, *State-to-State Investment Treaty Arbitration: A Hybrid Theory of Interdependent Rights and Shared Interpretive Authority*, 55 Harv. Int’l L.J. 1 (2014).

⁷⁸ Anthea Roberts, *Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System*, 107 Am. J. Int’l L. 45 (2013).

B. The Case For:

The case for an IPA built on state-to-state adjudication rests on three arguments. The first is filtering: a home state will take up only claims it judges meritorious and worth the diplomatic cost, so frivolous or opportunistic claims fall away. The second is symmetry: disputes are settled between equals, each of which must live with the interpretation it advances because each is both home state and host state. The third is coherence with Indian practice: India would extend to the EU what it has already accepted with Brazil, EFTA and the United Kingdom.

C. The Case Against:

The objections are weighty. The first is repoliticisation. A central purpose of investor–state arbitration, as its defenders stress, was to remove investment disputes from inter-state relations;⁷⁹ state-to-state processes bring them back, so that a dispute over one investor’s licence becomes an item on the bilateral diplomatic agenda. The second is collective action within the Union. Who would espouse a claim: the Commission, the investor’s member state, or both? Because investment protection is a shared competence after Opinion 2/15, internal allocation rules would be needed, and every claim would require an internal political decision.⁸⁰ The third concerns remedies. Inter-state awards typically yield declarations and, at most, compensation payable to the state, with no assurance that it reaches the injured investor. The fourth, decisive from Brussels’ perspective, is that a purely state-to-state IPA would abandon the model the EU has embedded in its treaties with Canada, Singapore, Vietnam, Chile and Mexico, and would undercut its multilateral court project.⁸¹

Puig and Shaffer supply the right analytical frame. Every institution for resolving investment disputes, whether domestic courts, inter-state processes, investor–state tribunals or standing courts, is imperfect; the relevant question is which mix of imperfections best fits a given relationship.⁸² Seen in this light, the IPA negotiation is not a choice between two ideal types but a search for a combination of institutions.

VI. MAPPING THE NEGOTIATING SPACE:

⁷⁹ Charles N. Brower & Jawad Ahmad, *Why the “Demolition Derby” That Seeks to Destroy Investor-State Arbitration?*, 91 S. Cal. L. Rev. 1139 (2018).

⁸⁰ Opinion 2/15.

⁸¹ MIC Negotiating Directives, *supra* note 7.

⁸² Sergio Puig & Gregory Shaffer, *Imperfect Alternatives: Institutional Choice and the Reform of Investment Law*, 112 Am. J. Int’l L. 361 (2018).

A. Shared Premises:

Beneath the institutional dispute, the parties already agree on more than is commonly acknowledged. Both have abandoned the open-textured FET clause: the EU in favour of a closed list, India in favour of enumerated prohibited conduct.⁸³ Both affirm the right to regulate. Both reject the party-appointed, ad hoc tribunal, India because of the expansive interpretations it associates with such tribunals, the EU because of concerns about independence and legitimacy.⁸⁴ And both seek to place interpretation under the control of the treaty parties, the EU through binding joint interpretations and India through restrictive drafting and state-to-state procedures.⁸⁵ Schill's account of investor-state dispute settlement reform as a constitutional project, aimed at subjecting investment adjudication to public law values, captures this convergence.⁸⁶

Many of the features India found objectionable in its arbitral experience are, moreover, features the ICS was designed to remove. Concerns about adjudicators who also act as counsel are met by ethics rules; concerns about inconsistent awards by an appellate tier; concerns about creative interpretation by binding party interpretations.⁸⁷ India's reservation is therefore less about the court than about what the court would be allowed to decide, and when.

B. The Hard Issues:

1. Exhaustion of Local Remedies:

The deepest structural conflict concerns sequencing. The EU model requires investors to withdraw parallel domestic proceedings before a claim proceeds, treating domestic and international routes as alternatives.⁸⁸ India's model makes domestic litigation a precondition: five years in the 2016 text, three years in the UAE treaty, and reportedly two years in the forthcoming model.⁸⁹ These rules can be reconciled. A clause could require an investor to pursue domestic remedies for a defined period and then permit it to bring a claim before the court on condition that it discontinues the domestic proceedings. The real questions are the length of the window and whether domestic decisions on the same measure would bind the

⁸³ CETA art. 8.10; Indian Model BIT art. 3.1.

⁸⁴ Concept Paper, *supra* note 7; Ranjan, *supra* note 10

⁸⁵ CETA art. 8.31.3; Roberts, State-to-State Investment Treaty Arbitration, *supra* note 76

⁸⁶ Stephan W. Schill, *Reforming Investor-State Dispute Settlement: A (Comparative and International) Constitutional Law Framework*, 20 J. Int'l Econ. L. 649 (2017).

⁸⁷ CETA arts. 8.28, 8.30, 8.31.3.

⁸⁸ *Id.* art. 8.22.

⁸⁹ Indian Model BIT art. 15.1; Herbert Smith Free hills, *India-UAE BIT*, *supra* note 54; *New Bilateral Investment Model*, *supra* note 69.

international court or merely inform it. *White Industries* shows why investors care: in a slow judicial system, a long mandatory window can itself become the injury.⁹⁰

2. Taxation:

Taxation is India's hardest red line. Its model treats the host state's own characterisation of a measure as taxation as non-justiciable.⁹¹ A self-judging carve-out of that breadth is difficult for the EU to accept, because a tax label could defeat any claim. Yet the EU's own practice already contains a template for a middle path. Under CETA, where a respondent invokes the prudential carve-out in a financial services dispute, the question may be referred to the parties' Financial Services Committee for a joint determination that binds the tribunal.⁹² A taxation filter on the same pattern, in which the competent tax authorities of both parties jointly decide whether a measure is a bona fide taxation measure and whether it is expropriatory, would give India a state-to-state gate on the issue it cares about most without surrendering the court for everything else. Reports that the India–UK investment talks stalled over taxation illustrate the cost of failing to find such a mechanism.⁹³

3. Most-Favoured-Nation Treatment:

The EU's approach includes MFN treatment, which India's model and its reported revision exclude.⁹⁴ India's objection is grounded in *White Industries*, where MFN imported a more favourable standard from a third treaty.⁹⁵ Recent EU practice, however, already confines MFN. CETA provides that substantive obligations in other international investment treaties do not in themselves constitute "treatment" capable of breaching the MFN clause, which forecloses the manoeuvre used in *White Industries*.⁹⁶ A similarly confined clause would preserve protection against discrimination in fact while preventing investors from shopping for standards in other treaties.

4. Enforcement of Awards in India:

Any adjudicative mechanism is only as valuable as its enforcement path. India is not a party to the ICSID Convention, so investment awards against it must be enforced, if at all, under the

⁹⁰ *White Indus.*, Final Award.av

⁹¹ Indian Model BIT art. 2.4(ii).

⁹² CETA art. 13.21.

⁹³ Lalive, *supra* note 9.

⁹⁴ CELIS Inst., *supra* note 42; Indian Model BIT; *New Bilateral Investment Model*, *supra* note 69.

⁹⁵ *White Indus.*, Final Award; Rudolf Dolzer, Ursula Kriebaum & Christoph Schreuer, *Principles of International Investment Law* (3d ed. 2022).

⁹⁶ CETA art. 8.7(4).

New York Convention.⁹⁷ India, however, has made the commercial reservation permitted by Article I(3), and the Arbitration and Conciliation Act, 1996 applies the Convention only to awards arising out of legal relationships considered commercial under Indian law.⁹⁸ In *Union of India v. Vodafone Group* the Delhi High Court characterised investment treaty arbitration as fundamentally different from commercial arbitration, and it adopted the same approach in *Khaitan Holdings*.⁹⁹ In 2025 an Australian appellate court reached a similar conclusion in proceedings concerning the Devas award, holding that the award did not arise from a commercial relationship within the scope of India's reservation.¹⁰⁰ Courts in other jurisdictions have nonetheless enforced the Deutsche Telekom award.¹⁰¹

For EU investors, therefore, an award against India might be unenforceable in India itself. CETA addresses enforcement by deeming its awards to relate to claims arising out of a commercial relationship or transaction for the purposes of the New York Convention.¹⁰² Reinisch has examined whether such deeming clauses, together with the ICS's other departures from conventional arbitration, secure enforceability; the question is not free from doubt.¹⁰³ An Indian court might well regard a treaty deeming clause as insufficient to displace the statutory definition in section 44. A durable solution would require India to implement the IPA through legislation, or to amend section 44, so that IPA awards are enforceable in Indian courts. This, rather than the forum question, may be the most consequential concession the EU should seek.

5. Appointment, Composition and Multilateral Docking:

The parties must also agree on how adjudicators are chosen. The ICS formula of appointment by a joint body in equal thirds gives each party a decisive role in the composition of the whole court, arguably more control than India ever exercised over party-appointed tribunals, where it named only one member of three.¹⁰⁴ The EU will also insist on a clause docking the bilateral

⁹⁷ ICSID Convention; Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 [hereinafter New York Convention].

⁹⁸ New York Convention art. I (3); The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996, § 44 (India).

⁹⁹ *Union of India v. Vodafone Grp. PLC U.K.*, 2018 SCC OnLine Del 8842 (India); *Union of India v. Khaitan Holdings (Mauritius) Ltd.*, 2019 SCC Online Del 6755 (India); Australian Court Judgment Introduces Another Twist in the Antrix–Devas Saga and Provides Vindication for the Delhi High Court, Kluwer Arb. Blog (Mar. 24, 2025), <https://arbitrationblog.kluwerarbitration.com/2025/03/24/australian-court-judgment-introduces-another-twist-in-the-antrix-devas-saga-and-provides-vindication-for-the-delhi-high-court/>.

¹⁰⁰ *Another Twist in the Antrix–Devas Saga*, *supra* note 98.

¹⁰¹ KG Berlin, 12 Sch 7/21; Conflict of Laws, *supra* note 21

¹⁰² CETA art. 8.41.5.

¹⁰³ August Reinisch, Will the EU's Proposal Concerning an Investment Court System for CETA and TTIP Lead to Enforceable Awards?—The Limits of Modifying the ISDS Mechanism, 19 J. Int'l Econ. L. 761 (2016).

¹⁰⁴ CETA art. 8.27; Basham, *supra* note 40.

court to a future multilateral body.¹⁰⁵ Calamita and Kaufmann-Kohler and Potestà have shown that transferring existing treaty disputes to a permanent or appellate body raises genuine questions of treaty law, but that these can be managed by an opt-in instrument.¹⁰⁶ India has not been an active participant in the work of UNCITRAL Working Group III.¹⁰⁷ Yet the finalisation in July 2026 of the statute of an Advisory Centre on International Investment Dispute Resolution, while draft statutes for a standing first-tier tribunal and an appellate tribunal remain under negotiation, gives India an opportunity to engage on its own terms.¹⁰⁸ As a state with growing outward investment, India has its own interest in institutions that can protect Indian investors in Europe.

VII. A PROPOSED DESIGN: SEQUENCED STANDING ADJUDICATION:

Drawing these threads together, this Part proposes an architecture for the IPA's dispute settlement chapter. It treats the ICS and state-to-state adjudication not as rivals but as layers, each addressing a distinct concern.

A. First Layer: Dispute Prevention:

The IPA should create a joint investment committee with national focal points, drawing on the Brazilian cooperative model that India has already accepted.¹⁰⁹ An investor would notify its grievance to the host state's focal point, triggering mandatory consultations within a fixed period. This layer imposes no doctrinal cost on the EU and responds to India's preference for negotiated solutions.

B. Second Layer: Time-Limited Domestic Remedies:

The investor would then pursue domestic remedies for a fixed period of eighteen months to two years, consistent with India's reported new model.¹¹⁰ The limitation period for the international claim should be suspended while domestic proceedings are pending, and the window should close early on a showing of denial of justice. At the end of the window the

¹⁰⁵ CETA art. 8.29.

¹⁰⁶ N. Jansen Calamita, *The (In)Compatibility of Appellate Mechanisms with Existing Instruments of the Investment Treaty Regime*, 18 J. World Inv. & Trade 585 (2017); Gabrielle Kaufmann-Kohler & Michele Potestà, *Can the Mauritius Convention Serve as a Model for the Reform of Investor-State Arbitration in Connection with the Introduction of a Permanent Investment Tribunal or an Appeal Mechanism?* (Geneva Ctr. for Int'l Disp. Settlement, June 3, 2016).

¹⁰⁷ CELIS Inst., *supra* note 42.

¹⁰⁸ *UNCITRAL Finalizes Advisory Centre Statute and Adopts New ISDS Procedural Provisions*, *Inv. Treaty News* (Int'l Inst. for Sustainable Dev.) (Sept. 9, 2026), <https://www.iisd.org/itn/2026/09/09/uncitral-finalizes-advisory-centre-statute-and-adopts-new-isds-procedural-provisions/>.

¹⁰⁹ Brazil-India ICFT; Monebhurrin, *supra* note 65.

¹¹⁰ New Bilateral Investment Model, *supra* note 69.

investor could discontinue domestic proceedings and proceed internationally, satisfying the logic of CETA's withdrawal requirement.¹¹¹ Nothing in Opinion 1/17 stands in the way of such a sequence.¹¹²

C. Third Layer: State-to-State Filters on Sensitive Matters:

For taxation and prudential measures, a joint determination by the treaty parties should precede adjudication, on the pattern of CETA's prudential filter.¹¹³ If the parties agree that a measure is a bona fide taxation or prudential measure, the claim would not proceed; if they fail to agree within a fixed period, the question would pass to the court. Together with binding joint interpretations,¹¹⁴ this layer gives India state-to-state control precisely where its experience suggests that control is needed.

D. Fourth Layer: A Bilateral Standing Court:

Claims surviving these layers would go to a bilateral two-tier court on the ICS model, with appointment in equal thirds, binding ethics rules and an appellate tribunal.¹¹⁵ A docking clause would commit the parties to transfer jurisdiction to a multilateral tribunal if both join one.¹¹⁶

E. Fifth Layer: Enforcement:

The IPA should deem awards to arise from a commercial relationship, as CETA does,¹¹⁷ and India should commit to implementing legislation making IPA awards enforceable in Indian courts. Without that commitment the other layers lose much of their value to European investors.

The design has limits. Each layer adds time, and an investor facing a rapid expropriation may be poorly served by a sequence that could run for well over two years before a court sits. The taxation filter may, in practice, exclude the very disputes, such as Vodafone and Cairn that drove India's change of course. And no design can guarantee that member states will ratify what the Union signs, as the fate of the Singapore and Vietnam agreements shows.¹¹⁸ But a sequenced model has one decisive virtue: it allows each party to describe the outcome in its own vocabulary. For the EU, the IPA would contain an investment court; for India, investor

¹¹¹ CETA art. 8.22.

¹¹² Opinion 1/17.

¹¹³ CETA art. 13.21.

¹¹⁴ *Id.* art. 8.31.3.

¹¹⁵ *Id.* arts. 8.27–8.30.

¹¹⁶ *Id.* art. 8.29.

¹¹⁷ *Id.* art. 8.41.5.

¹¹⁸ *Projet de loi n° 920, supra note 52.*

claims would reach that court only after prevention, domestic remedies and state-to-state filters had been exhausted. Treaties between parties with incompatible models are usually concluded in exactly this way.

VIII. CONCLUSION:

The EU–India trade agreement was concluded without its investment pillar because the parties disagree not only about how investment disputes should be adjudicated but about how far investors should be able to bring them at all. This article has argued that the disagreement is narrower than the familiar framing of an investment court against state-to-state arbitration suggests. Both parties have abandoned ad hoc arbitration and open-ended standards. What divides them are four technical issues, namely the length of the local remedies window, the treatment of taxation, the scope of MFN treatment and the enforceability of awards in India, and each has a workable precedent in the parties' own treaty practice.

The cost of further delay falls unevenly. Legacy European investments remain protected under sunset clauses into the early 2030s; new European investments in India have no treaty protection, and neither do new Indian investments in the Union. India's revision of its Model BIT and the finalisation of UNCITRAL's Advisory Centre statute in 2026 create an opening. A model of sequenced standing adjudication, combining dispute prevention, time-limited domestic remedies, state-to-state filters, a bilateral standing court and a firm enforcement commitment, would allow both sides to finish the pillar without abandoning the commitments that have so far kept it unbuilt.